

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Business Meeting
November 7, 2005
Department of Environmental Quality
Metcalf Building Room 111, 1520 East 6th Avenue
Helena, MT

Members in attendance were Tom Bateridge, Theresa Blazicevich, Frank Boucher, Greg Cross, Roger Noble, Shaun Peterson, and Frank Schumacher. Also in attendance were Terry Wadsworth, Executive Director and Paul Johnson, Board attorney.

Presiding Officer Cross called the meeting to order at 10:01 a.m. He introduced Mr. Boucher, a new member of the Board.

Election of Officers

Mr. Wadsworth stated that according to the Board's rules, new officers must be elected.

Mr. Schumacher moved to nominate Greg Cross as Presiding Officer. Mr. Noble seconded. **The motion was unanimously approved.**

Mr. Noble moved to nominate Frank Schumacher as Vice Presiding Officer. **The motion was unanimously approved.**

Approval of Minutes

Mr. Bateridge moved to accept the minutes of the September 12, 2005 Board meeting as written. Ms. Blazicevich seconded. **The motion was approved. Mr. Boucher abstained.**

Eligibility Ratification

Mr. Wadsworth informed the Board of the eligibility applications before the Board. (See table below). He noted that there were no recommendations to deny eligibility to be ratified.

Mr. Schumacher moved to ratify the eligibility determinations contained in the eligibility table. Mr. Bateridge seconded. **The motion was unanimously approved.**

Board Staff Recommendations Pertaining to Eligibility From August 30, 2005 thru October 25, 2005				
Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
Poplar	Lee Ann's Motel	43-01701	1537 Mar 1990	Eligible – No reported violations 9/7/05
Stevensville	Custom Log Homes, Inc	41-01022	4424 June 2005	Eligible - No reported violations 9/7/05
Noxon	Former Bull River Phillips 66 Service	187	3964 April 2000	Eligible – No reported violations 9/21/05
Red Lodge	Clark's Bus Garage	05-00712	4431 June 2005	Eligible – No reported violations 9/21/05
Havre	Superior Lube	60-15014	4435 Aug 2005	Eligible – No reported violations 9/30/05
Libby	Save-Rite South	27-01240	4401 Mar 2005	Eligible – No reported violations – 9/30/05
Missoula	Holiday Station Store #282	32-09733	4085 Jul 2001	Eligible – No reported violations 9/30/05

Table continued . . .

Board Staff Recommendations Pertaining to Eligibility From August 30, 2005 thru October 25, 2005				
Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
Polson	Unocal Bulk Plant-Card Loc	56-13778	4422 June 2005	Eligible – No reported violations 10/6/05
Kalispell	Cenex Supply & Marketing	15-09705	3698 Mar 1999	Eligible – No reported violations 10/6/05
Butte	Rd's Travel Plaza	47-05148	4397 Feb 2005	Eligible – Insurance matters 10/7/05
Choteau	Breen Oil Co.	50-00854	4411 May 2005	Eligible – No reported violations 10/17/05
Kalispell	Tri-City Quick Stop	15-07490	4278 Sept 2003	Eligible – No reported violations 10/25/05

Claims over \$25,000

Mr. Wadsworth presented the Board with the claim for an amount greater than \$25,000 since the last Board meeting. (See table below). There is one claim totaling \$138,605.09. The claim is for excavation costs for a digout.

Presiding Officer Cross asked if the site is closed or near closure.

Mike Trombetta, Hazardous Waste Site Cleanup Bureau Chief, stated that the site is not closed. He will find out the status of the site and report to the Board at the next regularly scheduled meeting.

Mr. Schumacher moved to approve the claim over \$25,000. Mr. Peterson seconded. **The motion was unanimously approved.**

Location	Facility Name	Facility ID#	Claim #	Claimed Amount	Reimbursed
Wolf Creek	Holter Lake Lodge	25-04300	200507011	\$140,145.99	\$138,605.09
Total					\$138,605.09

Weekly Reimbursements

Mr. Wadsworth presented the Board with the summary of weekly claim reimbursements for the weeks of August 31, 2005 through October 26, 2005 for Board ratification. (See table below). There were 283 claims, totaling \$813,025.02. He also noted that there is one claim that was denied in its entirety.

Mr. Schumacher moved to approve the weekly claim reimbursements. Mr. Bateridge seconded. **The motion was unanimously approved.**

<u>WEEKLY CLAIM REIMBURSEMENTS</u> November 7, 2005 BOARD MEETING		
<u>Week of</u>	<u>Number of Claims</u>	<u>Funds Reimbursed</u>
August 31, 2005	48	\$127,233.06
September 7, 2005	39	\$115,037.38
September 14, 2005	38	\$118,213.14
September 21, 2005	38	\$133,517.88
September 28, 2005	41	\$113,242.69
October 5, 2005	34	\$93,760.68

Table continued . . .

<u>WEEKLY CLAIM REIMBURSEMENTS</u> November 7, 2005 BOARD MEETING		
<u>Week of</u>	<u>Number of Claims</u>	<u>Funds Reimbursed</u>
October 12, 2005	24	\$59,332.66
October 26, 2005	21	\$52,687.53
Total	283	\$813,025.02

Presiding Officer Cross noted that some releases are nearing cumulative reimbursement of \$500,000. Once \$1 Million has been spent on a release, all further costs must be borne by the owner of the release. He expressed concern that most owners/operators are not focused on that fact, and have not followed the costs closely.

Pay-by-Task

Discussion on this matter was conducted at the end of the meeting. Mr. Wadsworth stated that the effort to develop a pay-by-task system is a direct result of the Legislative Audit Committee's recommendation, and is a component of cost control efforts, along with reporting standards and limits on site activities. He provided a brief summary of the latter two items. Reporting standards are being implemented gradually. Possible limits on site activities will be evaluated by the fund solvency work group.

Mr. Wadsworth then explained the pay-by-task concept and how it will assist in cost control. He introduced the term "event task", giving the example of a groundwater monitoring work plan task that requires four monitoring events, i.e., four quarters of groundwater monitoring. It is not the intent to require a consultant to complete all four quarters of monitoring before submitting a claim. Each quarterly monitoring event can be claimed separately. Using the groundwater monitoring work plan task example, including project management, monitoring, groundwater analysis and a report, he walked the Board through the current claim submittal process. He noted that, for the example given, as few as one claim or many as 20 claims may be submitted for an event task, since many consultants submit multiple claims for partially completed tasks. This results in the requirement that staff review an agreed upon work plan multiple times to compare the costs that have been claimed against the agreed costs. Using the same example under the pay-by-event-task concept, there would be a maximum of four claims submitted for an event, one each for project management, monitoring, groundwater analysis and the report. Therefore, paying for an event task only when it is completed will reduce the number of claims received, the number of times a work plan must be reviewed, and allow for easier cost analysis.

If the Board wishes to establish the pay-by-event-task policy, Mr. Wadsworth suggested flexibility in enforcing the new pay-by-task requirements for a period of months while the consulting community becomes familiar with the process. The claim form has been modified to allow for task submittal. The staff has not yet formally presented the pay-by-event-task concept to the consulting community and other submitters, though the task list has been reviewed by the consultants.

Mr. Noble supports the concept. The way it is proposed would allow flexibility to bill for each component of the task as needed; for instance, bill for project management and monitoring, then for analytical when the results are in, then for the report, once it is complete, rather than needing to wait for all of those components to be completed. In addition, he felt it would help consultants with time management. He proposed introducing it at a consultants' workshop.

Mr. Wadsworth indicated that multiple completed tasks can still be submitted on one claim form.

Mr. Schumacher suggested that the staff take steps needed for implementation and move forward with the concept.

Mr. Wadsworth stated that the staff will get the information out to consultants for review and comment and address the concept at a consultants meeting. Once comments are received the staff will begin to generate a policy.

Mr. Cross asked Earl Griffith, Tetra Tech, for his opinion on the concept.

Mr. Griffith agreed that the Board is on the right track and that, as long as there is some flexibility on both sides, this should be a workable process. Consultants will need to manage their time more effectively, which is a good thing.

Rule Working Group Report

Mr. Wadsworth provided a brief summary of the Work Group's activities. The AST Work Group has continued to refine the active AST checklist, and is now addressing whether and how to include inactive AST facilities and heating oil tanks in the Fund. The potential liability associated with ASTs is not clear.

Mr. Noble expressed concern about fund solvency and, specifically, what he perceives as excessive groundwater monitoring at sites with low contamination.

Mr. Schumacher moved to create an ad hoc committee to address fund solvency, to be comprised of two members from the Board, currently Roger Noble and Theresa Blazicevich, two members from the Department, two consultants who will be recommended by the Department and the Board, and two owners/operators, with Mr. Wadsworth as a clearinghouse for the group. Mr. Boucher seconded. **The motion was unanimously approved.**

Discussion ensued concerning development of a checklist for heating oil tanks and possible eligibility requirements. The question was raised whether heating oil and inactive AST sites should be excluded from coverage by the Fund. The Fund was initially created to assist in cleanup of commercial sites.

Presiding Officer Cross recommended that the Working Group develop possible statutory changes to remove heating oil tanks from the Fund. There is concern that very little revenue comes to the Fund from sales of heating oil. In addition, such tanks are not currently regulated.

Mr. Trombetta suggested that Mr. Wadsworth determine how many heating oil tanks are currently receiving reimbursement from the Fund.

Mr. Peterson will determine whether homeowner's insurance policies typically carry pollution exclusions, and whether coverage riders for heating oil tanks can be added.

The Board discussed whether it can prioritize payment of claims and delay those that it deems are low priority. The members also discussed various permitting and incentive options to encourage heating oil tank owners to have their tanks inspected and upgraded as a condition of eligibility. Heating oil distributors might be enlisted to distribute information concerning voluntary compliance and eligibility checklists if the decision is made to keep such tanks in the Fund.

Fiscal Report

Mr. Wadsworth presented the Board with the current Fiscal Report. He noted the addition of the Contingent Contract Services language appropriation of \$187,500. In addition, he noted that there are three payments remaining on the 1997 Loan after the February 2007 payment, and that there is currently cash available to retire the loan. There was a discussion of whether paying off the loan early was of any benefit.

Mr. Schumacher moved that Mr. Wadsworth investigate the feasibility and value of early repayment of the 1997 Loan and bring the results of his investigation to the January Board meeting. Mr. Noble seconded. **The motion was unanimously approved.**

Board Attorney Report

Paul Johnson, attorney for the Board, provided an update on the Town Pump-Dillon case (See last entry, table below). The stipulated facts in the matter have been provided to the hearing examiner. The State has filed a Motion to Dismiss, and Town Pump has filed a Motion for Summary Judgment. The hearing is scheduled for November 16 at 9:00 a.m. He is hopeful that a decision will be rendered by the end of the year.

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Boulder	Old Texaco Station	22-11481 Release #03138	Eligibility 11/25/97	Dismissal Pending because cleanup of release completed.
Thompson Falls	Feed and Fuel	45-02633 Release # 03545	Eligibility	Case was stayed on 10/21/99.
Eureka	Town & Country	27-07148 Release #03642	Eligibility 8/12/99	Hearing postponed as of 11/9/99.
Helena	Allen's Oil Bulk Plant	25-01025 Release #02893	Eligibility 11/29/99	Case was stayed on 1/21/00.

Table continued . . .

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Butte	Shamrock Motors	47-08592 Release #03650	Eligibility 10/1/99	Case on hold pending notification to Hearing Officer.
Whitefish	Rocky Mountain Transportation	15-01371 Release #03809	Eligibility 9/11/01	Ongoing discovery. No hearing date set.
Lakeside	Lakeside Exxon	15-13487 Release #03955	Eligibility 11/6/01	In discovery stage.
Helena	Noon's #438	25-03918 Release # 03980	Eligibility 2/19/02	Case stayed.
Wolf Point	Isle Oil Co	43-08893 Release #2552	3 claim adjustments 12/21/02	Hearing stayed. Settlement negotiations on-going.
Belt	Mary Catherine Castner	07-12039	Eligibility 11/22/02	Mar 12, 2003 stayed for up to one year.
Dillon	Town Pump Dillon #1	01-08695 Release #4144	Eligibility 03/07/05	Hearing set for Nov 16, 2005.

Board Staff Report

Mr. Wadsworth told the Board that he had recently met the Legislative Audit Committee (LAC) Division, to discuss the progress that has been made on the recommendations in the 2003 Legislative Audit Committee Report. The LAC is pleased with the progress the Board has made and will continue to monitor developments in the future. The Audit Division currently does not see a need for a follow-up audit.

Mr. Wadsworth presented the Board staff report showing that 64 eligibility applications were received during the past twelve months. 42 were eligible, 6 were ineligible, and 16 are pending. The number of claims received in the past twelve months is 1519 and the number reimbursed is 1548

Mr. Wadsworth drew the Board's attention to the Corrective Action tables in the packet. The value of plans reviewed spiked in April. The staff is watching claim activity to see if and when it is reflected in the claims. The spike may be averaged out over several years.

Presiding Officer Cross asked what costs are included in the Value of Corrective Action Plans Reviewed table. He also asked if there is a method in place to have the owner/operator involved in the discussions regarding work plan costs.

Mr. Wadsworth indicated that the staff reviews work plans as they are proposed in order to assist the owner/operator and consultant with approving work plan costs, so that they will know what costs are likely to be reimbursed once the work is done. The total cost of all work plans reviewed in a month is the data for that month indicated in the table.

Mr. Trombetta stated that all correspondence requiring work at a site goes to the owner/operator. Many of them delegate the task of developing work plans to consultants and have no further interest in the matter. DEQ works with the consultants. A few owners/operators are involved in the process.

Petroleum Release Section Report

Mr. Trombetta addressed the Board. So far this calendar year, there are 53 confirmed releases, as compared with 59 in the entire calendar year 2004. This indicates a slight upward trend for the year. There is currently a three-to-one ratio in types of causes of releases between human activity and equipment failure. There is a trend over time toward more releases being caused by human error and fewer by equipment failure. 25 releases have been resolved this year.

Mr. Schumacher asked for an explanation of what is meant by a resolved release.

Mr. Trombetta stated that "resolved" means a "No Further Action" letter has been sent to the owner/operator that states that no further action is required and the release is resolved, and that monitoring wells can be closed.

There was a discussion of whether an education program aimed at reducing the number and severity of releases caused by human error should be developed. The DEQ permitting section is currently developing training for inspectors that may address some of the same issues. Mr. Cross asked that Bill Rule, Underground Storage Tank Program, address the next

Board meeting to discuss the Tank Program's training efforts, as well as recent changes to the program as a result of the 2005 Energy Policy Act.

As part of the Energy bill, LUST Trust grant funding is tied to compliance of the active underground storage tanks in the state.

As part of the ongoing Board member training being conducted by the staff, Mr. Trombetta provided an explanation of the petroleum release investigation and cleanup processes using the attached flow chart.

Mr. Bateridge left the meeting at 11:30 a.m.

Public Forum

Earl Griffith addressed the Board to provide a summary of his recent meeting with Sandi Olsen, DEQ Remediation Division Administrator, and other DEQ staff concerning a site in Lincoln. He had requested, and been denied, closure because DEQ required further evaluation that Mr. Griffith felt was excessive. The meeting resulted in a reasonable adjustment to the work required. Six wells will be sampled. All attendants at the meeting agreed that the process should be modified to attempt to secure input from all necessary parties, including the owner/operator, before final recommendations for additional work are prepared by the case manager. He noted that Mr. Mulcare, the property owner, stated at the meeting that the current process makes it difficult to transfer property. Mr. Griffith stressed that actions taken by the DEQ affect people's lives, and that must be taken into account when decisions are made. He also noted that Mr. Kuhn had stated that when water quality is concerned, there will be no negotiations on RBSL's and standards. A risk-based system needs to accommodate risk in spite of non-degradation rules.

Mr. Trombetta stated that if there are contaminant levels above the RBSLs, a site can be closed, as long as people are not drinking the water.

Ms. Olsen noted that the subject of RBSLs has been raised and she volunteered to provide a presentation on RBSLs at a future meeting. She also stated the meeting with Mr. Griffith was good. The guidance available is open to interpretation, and DEQ will attempt to provide more information and consistency in its interpretation of the guidance.

The Board took a brief break before returning to the subject of Pay-by-Task. Please see the heading earlier in the minutes. Mr. Johnson left the meeting at 11:55 a.m.

The next scheduled Board meeting is January 9, 2006, in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, MT.

Meeting adjourned at 12:23 p.m.

Greg Cross - Presiding Officer